

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary J. Florijan,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1222 C.D. 2010
	:	
Respondent	:	Submitted: September 24, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 21, 2010

Gary J. Florijan (Claimant) petitions this Court for review of the May 6, 2010 order of the Unemployment Compensation Board of Review (UCBR) affirming the Referee’s decision dismissing Claimant’s appeal under Section 501(e) of the Unemployment Compensation Law (Law).¹ The dispositive issue before the Court is: whether the UCBR erred in dismissing Claimant’s appeal under Section 501(e) of the Law for failure to file a timely appeal.² For reasons that follow, we affirm the UCBR’s order.

¹ Act of December 5, 1936, Second Ex.Sess., P.L. (1937) 2897, *as amended*, 43 P.S. § 821(e).

² Claimant also raises the substantive issue of whether the UCBR erred in determining that Claimant was ineligible for benefits under Section 402(h) of the Law, 43 P.S. § 802(h) (engaged in self-employment); however, due to our determination that Claimant failed to timely appeal, Claimant’s substantive issue shall not be addressed.

Claimant was employed as a cabinet maker for Florijan Cabinet Company, Inc. (Employer), a company owned by his father. In 2000, the business was transferred to Claimant and his brothers. Claimant was secretary/treasurer, and 33% stockholder of Employer at the time the brothers closed the business in June of 2009. Claimant subsequently applied for Unemployment Compensation (UC) benefits. On January 25, 2010, the Duquesne UC Service Center mailed a letter of determination to Claimant denying him UC benefits under Section 402(h) of the Law (engaged in self-employment), and giving him until February 9, 2010 to appeal. Claimant filed an appeal, which was received by the UC Service Center on February 18, 2010; 9 days after the time to appeal expired. By notice mailed March 18, 2010 to Claimant's address of record, 8843 Maple Street, Allison Park, Pennsylvania, Claimant was notified of a hearing scheduled for March 19, 2010, at which the Referee would determine whether Claimant had a timely and valid appeal. Claimant failed to appear for the hearing and, since his appeal was untimely on its face, the Referee dismissed the appeal. Claimant appealed to the UCBR. The UCBR affirmed the decision of the Referee. Claimant appealed pro se to this Court.³

Claimant argues that the UCBR erred in dismissing his appeal under Section 501(e) of the Law. Section 501(e) of the Law provides:

Unless the claimant . . . files an appeal with the board, from the determination contained in any notice required to be furnished by the department . . . within fifteen calendar days after such notice . . . was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set

³ “Our scope of review in unemployment compensation cases is limited to determining whether constitutional rights were violated, whether errors of law were committed or whether findings of fact are supported by substantial evidence.” *Lindsay v. Unemployment Comp. Bd. of Review*, 789 A.2d 385, 389 n.4 (Pa. Cmwlth. 2001).

forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith.

Claimant admits that he did not file his appeal from the UC Service Center's determination in time. Claimant Br. at 7, 10. "Generally, an appeal nunc pro tunc may be allowed when a delay in filing the appeal is caused by extraordinary circumstances involving fraud or some breakdown in the court's operation through a default of its officers" or "the non-negligent conduct of the appellant's attorney or his staff." *Cook v. Unemployment Comp. Bd. of Review*, 543 Pa. 381, 383-84, 671 A.2d 1130, 1131 (1996) (citations and quotation marks omitted). The instant record, however, is void of any such circumstances. We hold, therefore, that the UCBR committed no error in dismissing Claimant's appeal for untimeliness.

Claimant contends on appeal to this Court that if the UC Service Center had decided this case under Section 402(b) (unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature), rather than Section 402(h) of the Law, he would not have had to appeal in the first place. Claimant also contends here that the notice of hearing was delivered to the wrong address, and he did not receive it until two weeks after the hearing, so he was unable to give testimony. However, in his appeal from the UC Service Center's determination, Claimant stated that the only reason for his disagreement with the decision was: "out of business, no income since aprox 6-09 other than minimal rent." Original Record (O.R.), Item No. 5. In his appeal to the UCBR, he again stated that the only reason for his disagreement with the Referee's decision was: "out of business – 0 income from 6/09/09." O.R., Item No. 10. Thus, the issues raised in Claimant's brief are being raised for the first time.

Pennsylvania Rule of Appellate Procedure 1551(a) states in pertinent part: "Review of quasijudicial orders shall be conducted by the court on the record

made before the government unit. No question shall be heard or considered by the court which was not raised before the government unit” Because Claimant failed to raise these procedural or substantive errors before the UCBR, those issues are waived and cannot now be decided by this Court. Moreover, the fact that Claimant, acting pro se, may not have been aware of the intricacies of appellate procedure cannot be remedied by this Court.

Any lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing. Claimant’s failure to adhere to the rules of appellate procedure and his failure to raise any issues within our scope of review preclude any meaningful review by this Court.

Daly v. Unemployment Comp. Bd. of Review, 631 A.2d 720, 722 (Pa. Cmwlth. 1993) (citation omitted).

For the above-stated reasons, we hold that the UCBR did not err in concluding that the Referee properly dismissed Claimant’s untimely appeal.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gary J. Florijan,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Unemployment Compensation	:	
Board of Review,	:	No. 1222 C.D. 2010
	:	
Respondent	:	

ORDER

AND NOW, this 21st day of October, 2010, May 6, 2010 order of the Unemployment Compensation Board of Review is affirmed.

JOHNNY J. BUTLER, Judge